1950

File No. C. Cr. P. C./50

Legal Department—

A **BRANCH**

Subject:— Opinions under the Code of Criminal Procedure 1898

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File No. C. Cr. P. C./50

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C O N T E N T S.

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14/6

Indian Lunacy Act, 1912.
Release of one Dharma Tapiram Toli against whom Chapter proceedings were pending.

Offices of the R.L.A.

As the visitors are of opinion that Dharma Tapiram Toli was capable of standing his trial, the correct procedure in this case was that outlined in section 473 read with section 468 of the Code of Criminal Procedure. Instructions 10 and 11 for the guidance of Judicial and Executive Officers in dealing with criminal lunatics apply primarily to cases where the lunatics is charged with an offence; and ordinarily they do not apply to criminal lunatics against whom "Chapter" proceedings are pending. As such proceedings are tobe initiated by the Sub-Divisional Magistrate in the interest of peace etc. it was competent to such Magistrate to drop them having regard to the recommendation of the visitors.

Id/- P.N.L. 10/1
Remembrancer of Legal Affairs.

U.O. to H.D. No. 868, dated the 10th January 1930.

RAM/13-6.
4 C.

Office of the R.L.A.

Section 29 of the Bombay District Police Act, 1890, provides for the punishment of police officers departmentally and is not attracted in this case. Under sec. 197(1) of the Criminal Procedure Code sanction of the Provincial Government is needed to enable Courts to take cognizance of offences committed by public servants only if they are not removable from office save by or with the sanction of the Provincial Government. "Where an authority has power to sanction the appointment the person so appointed cannot be ~~may~~ removed without the sanction of that authority". (Mitra's Cr. P.C. p.623). The power to appoint Inspectors and Head Constables of Police has at present been given to the I.G.P. and the Superintendent of Police (vide R.D. Notifications 1926-6/III, dt. 29-9-1919 and 7317/B-II(b), dt. 15-7-1929). It is presumed that the police officers in question were accordingly in fact appoin-ed by the I.G.P. or the Superintendent of Police. These officers have therefore got power to remove them from office. No sanction of Government is need-ed for their removal from service. Consequently, it is not necessary to give sanction under sec.197 (1) Cr. P.C. for their prosecution.

2. The officers in question have already been suspended from service by the I.G.P. The Home Department may therefore issue executive instructio to the I.G.P. that the Sub-
to the I.G.P. that the Sub-divisional Police Inspe-ctor and the Head Constables should be prosecuted along with Mr. Khojwani for whose prosecution sanc-tion has already been granted.

EAH/13-6.
4 c.

Sd/- P.M.L. 24/1
Assistant Adviser of Legal Affair
U.S. to R.D. No.72-Confl., Dt. the 24th Jan., 195

L.D.

R.I.No.105-Confl., dated 17-2-50.

Submitted.

Please see R.L.A's opinion No.313-Confl., dated 3-6-1949, and P.W.D. note at p.194 ante. Mr.Paregaonkar, clerk in the V.S.S Sub-Division Satana, Nasik District has now approached Government through his pleader for permission to file criminal and civil proceedings against Mr.A.G.Maydeo, S.E.& D.I.C.,for making an alleged defamatory statement in the warning issued to him. It appears that the warning was given under orders of Government and the Secy., P.W.D., states that the pleader may be informed that Government is unable to order the S.E. to withdraw the warning and that as regards sanction for legal proceedings the matter would be examined if an indication is given of the legal action contemplated and the provision of law under which Government sanction is sought. The R.L.A. is requested to advise in the matter.

A.L.R. Reply may be:-

Instead of entering into correspondence with the applicant he may be informed that Govt. declines to accord sanction to his going to a Court of law in the matter.

Id/- R.T.K. 20/2

R.L.A. Id/- P.M.L. 20/2

U.R. to P.W.D. No.136-Confl., dt. 22-2-1950.

KAN/13-6.
4 c.

Office of the H.L.A.

Trial of military personnel for prohibition offences.

Indian Army Act, 1911 and Criminal Procedure Code, 1898, section 549

The offences under the Prohibition Act would be "civil offences" within the meaning of section 7(18, of the Indian Army Act, 1911 and under section 41 of that Act would be triable by a Court-martial. Rules have been framed under section 549 of the Criminal Procedure Code for trial of persons subject to the Army Act and the Magistrate should have followed these Rules. Attention of the Magistrate may be invited to these Rules which are printed at pp.53-54 of Criminal Manual issued by the High Court, Bombay.

Id/- P.H.L. 14/1

Remembrancer of Legal Affairs.

U.O. to R.D. No. 643 dated the 14th January 1950.

KAH/13-C.
4 c.

Office of the R.L.A.

Criminal Procedure Code, 1893, section 11A. Whether amendment is necessary.

So far as this State is concerned the question is of academic interest only since by sub-section (1A) of section 7 of the Criminal Procedure Code as inserted by section 2 of the Code of Criminal Procedure (Bombay Amendment) Act, 1948, Greater Bombay is now made a sessions division.

Id/- P.H.L. 6/3

Remembrancer of Legal Affairs.

U.R. to H.Q. No.1751, dated the 7th February 1950.

KAH/13-6.
4 c.

Office of the R.L.A.

The Criminal Procedure Code, 1898, section 37. Investment of Mr. B.C. Cariappa, I.A.S. with powers under.

The notification issued by the Assistant Magistrate Poona on 16th February 1949 investing Mr. Cariappa with the powers under sections 143, 174 and 190 of the Criminal Procedure Code is invalid since Mr. Cariappa was not a Magistrate in the Poona District on that date. The District Magistrate's proposal to so appoint him retrospectively is also not in order since criminal powers cannot be granted retrospectively (view para. 2 of R.L.A's opinion No.11599, dated 15-10-1949). The trials held by Mr. Cariappa must be treated as nullities; and that consequence is by no means so serious as to necessitate any validating action.

Id/- P.M.L. 7/1

Remembrancer of Legal Affairs.

U.R. to H.D. No.296 , dated the 9th January 1950.

KAH/13-6.
4 c.

Office of the R.L.A.

Sub-section (6) of section 144 of the Code of Criminal Procedure provides that no order under that section shall remain in force for more than two months from the making thereof; unless in case of danger to human life, health or safety or a likelihood of a riot or an affray, the Provincial Government by notification in the Official Gazette otherwise directs. This sub-section has been interpreted in Emperor v. Khure Mal (I.L.R. 45 All. 526) where it was laid down that the Provincial Government is not concerned with the reasons originally given by the Magistrate for making the order but with the actual order passed by him, and if the Provincial Government considers that there is danger to human life, health or safety or a likelihood of a riot or an affray, it is perfectly competent to it to extend the period of the order. In other words, the continuation of the order need not be based upon the continuation of the circumstances which initially led to it and which are described in the original order. What sub-section (6) demands is that the order should be relatable to a case of danger to human life, health or safety or a likelihood of a riot or an affray; and so long as there is such case to the satisfaction of the Provincial Government, there should be no legal objection to extending the order although the precise circumstances upon which it was initially based may no longer be operative in full force. Furthermore, it was also held in the above quoted case that there is nothing in the section which requires the Provincial Government to state its reasons or even to state the

fact of the likelihood of a riot or an affray or other danger which it apprehends, and it is not open to the High Court to add to the section a condition not imposed by the legislature. I am doubtful whether our High Court will endorse this letter view, and it would, therefore, be safer to recite in the preamble as of the extension order, as has been done in the past, that it is being extended with a view to preventing danger to human life and safety and a likelihood of riots or affrays.

Id/- P.M.L. 24/1

Remembrancer of Legal Affairs.

U.S. to H.D. No.1156, dated the 25th January 1950.

KAN/13-6.
4 c.

Legal Department.

Attention is invited to adaptations to the Criminal Procedure Code, 1898, made under the Adaptation of Laws Order, 1950 issued by the President on 26th January 1950. The forms in question, namely Forms Nos. C.P.C.11 and 12 M.G.E. appear to be the versions in regional languages of Forms Nos. 10 and 11 prescribed in Schedule V to the Criminal Procedure Code, 1898. In the original forms as prescribed there occurs the expression "Her Majesty the Queen" and that expression has been substituted by the expression "Government" under the Adaptation of Laws Order, 1950 (see adaptations to the Criminal Procedure Code, 1898). The forms in the regional languages will have therefore to be adapted so as to refer to "Government" in place of "Her Majesty the Queen".

Sd/- J.R.D. 15/4

Additional Secretary to Government.

U.R. to M.D., No.5300, dated the 17th April 1950.

KAM/13-6.
4 c.

Office of the R.L.A.

The order suffers from several defects. In the first place, it speaks of the persons as being engaged in the anti-Government activities like anti-levy activities, which is a very vague description. Ordinarily, the order must be confined to the particular act from which the danger is apprehended. Any order prohibiting a course of conduct or an occupation involving a series of acts would not be legal. Secondly, the recitals in the order do not, by themselves, establish the sufficiency of the ground in the matter of an emergency. Thirdly, it is doubtful whether an activity like the anti-levy activity can x come within the categories specified in the concluding sentence of sub-sec. (1) of section 144 of theCriminal Procedure Code.

Id/- P.M.L. 26/4

Remembrancer of Legal Affairs.

U.O. to H.D. No.284-Confl. dated the 26th April 1950.

KAN/13-6.
4 c.

In the case of Maharani Gurucharan Kaur of Nabha v. the Province of Madras (A.I.R.1932.Madras539) it was held that there is no warrant for the proposition that a Police Officer cannot order the arrest of a person by means of a telephonic message. No doubt that decision was given in relation to clause ninthly of subsection (1) of section 54 of the Code of Criminal Procedure. That clause in terms would not apply in the present case, because this was not a case where the Police Officer issuing the requisition viz. the Bombay Police Officer, can be said to have authority lawfully to arrest the person without a warrant. In this case the warrant issued by a Court was pending against the person arrested. It as seems from the version given in the letter of Mr. Oza that the warrant was issued by a Court in Madras. It is not quite clear whether it was directed toa Police Officer in Bombay City. The correct procedure for executing warrants beyond the limits of the jurisdiction of the Court is given in section 84 of the Code ofCriminal Procedure. It will be noticed that subsection (3) thereof provides that if delay is likely to prevent execution the Police officer to whom it is directed may execute the same without an endorsement from the Magistrate or a Police Officer. It would, therefore, follow that the Bombay Police could have executed the warrant in Lonavala. They directed its execution on the telephone. The Lonavala Police were also informed on theinformation which they had no reason to disbelieve that the person was trying to evade arrest and was involved in some heavy misappropriation. The Police Officer at Lonavala verifed the fact that such a warrant was pending. He could not ascertain

the further details whether the warrant was non-bailable or bailable, and if bailable what was the amount of bail permitted. However, having received definite information from the Police Officer in Bombay that x a warrant was pending against the person who, his information showed, was trying to evade arrest, I do not think that the Police Officer was at fault in arresting the person and produc- x ing him before the Magistrate. It was the Magistrate's duty to get in touch with the Bombay Police and to admit the person to baidl. However, if it be true that the arrested person or someone on his behalf had insisted, as is alleged in thelotter from Mr. Oza, that the arrested person should be taken to Bombay and was even prepared to pay the costs of the transport of the party, the Police Officer should have adopted that course, particularly as he did not know the details of the warrant.

Sd/- P.M.L. 23/5

Remembrancer of Legal Affairs.

U.R. to H.D. No.7023 , dated the 24th May 1950.

KAH/13-6.
4 c.

Office of the R.L.A.

As the matter relates entirely to a judicial act of a Magistrate, before any action is taken against him, the papers should be shown to the High Court and its views elicited. The draft letter as amended may issued.

Id/-P.M.L. 17/5

Remembrancer of Legal Affairs.

U.H. to H.D., No. 6735, dated the 13th May 1930.

KAH/13-6,
4 c.

R.I.No. C603 dt. 13-5-50.

Submitted.

It appears that the property of Shri S.R.Curay of Kajinal, taluka Panhala was attached under sec. 83 Cri. P.C. in the year 1926 by the Subdivisional Magistrate, H.D., Kolhapur and the lands were leased to a third party. Shri Curay is still absconding and the Sub-Divisional Magistrate ordered it to be sold by auction in 1949. An auction sale of this property was held by the Mamlatdar subject to confirmation by the Sub-Divisional Magistrate. In the meanwhile Chandrabai the present applicant applied for a stay order and pleaded her claim on the ground that since her father did not return even after a lapse of 24 years, his death should be presumed and as the only heir she is entitled to the property. The D.M., Kolhapur states that there is no justification for handing over the property to the applicant. R.D. is also of the view that since the applicant has put in her claim after 24 years she is not entitled to the property. The R.L.A. is requested to confirm its view recorded in paras. 2 and 3 of its note at p. 13 ante.

The view taken by R.D. in para 3 of its note at p. 13 ante is correct. (Cf. R.L.A's opinions No.8910, dated 16-12-1944).

Sd/- P.S. Nadkarni 30/5.

I agree
D.S.(Cri.) our reply may be on at A.

Id/- 5-6

R.L.A. Id/-.P.M.L. 5/6

U.R. to R.L. No.7696 dt. 7-6-1950.

KAN/13-6.
l c.

Office of the R.L.A.

Prosecution of Shrimati Bhapkar, President, District Local Board, Ahmednagar.

Section 197 Criminal Procedure Code.

The two questions raised for the consideration of the R.L.A. are

(1) Whether sanction under section 197(1) of the Criminal Procedure Code is necessary for prosecution of the President, Shrimati Bhapkar and

(2) Whether on the facts of the case it would be ~~[illegible]~~ advisable to accord that sanction.

2. On the first question the test formulated by the Privy Council in the case of Gill Vs. King. 50 Bombay Law Reporter 487 a has been rightly invoked by the Secretary, Local Self Government and Public Health Department. The nature of the complaint made by Shrimati Bhapkar, her status as President of the District Local Board and the admitted ownership of the material by the District Local Board are all circumstances which would enable Shrimati Bhapkar to claim that in filing the complaint she acted in virtue of her office. She has in fact made that claim before the Sub-Divisional Magistrate. The allegation that the complaint was filed by her without reasonable or probable cause or was even vexatious would not take away from the act of filing the complaint the official character attaching to it; and that act can still be held as purported to be done in the discharge of official duty. The answer to the first question is, therefore, in the affirmative.

3. On the second question it is pertinent to point out that the Police Sub Inspector, Ahmednagar City was of opinion that the complaint was not without substance. The circumstances selected by the Secretary, Local Self Government & Public Health Department

as relevant to this issue also show that the complaint was not altogether unjustified. If that be so, it would not be expedient to accord sanction in this case.

"The object of this section 107 is to guard against vexatious proceedings against Judges, Magistrates and public servants, and to secure the opinion of superior authority whether it is desirable that there should be a prosecution" (Woodroffe, p.229). Besides aarder Thoret can still pursue his proper legal remedy in tort; and where such remedy is available courts have repeatedly deprecated the policy of placing the weapon of prosecution at the disposal of parties to gratify private spite. Having regard to all these circumstances the answer to the second question is in the negative.

Sd/- P.M.L. 7/6

Remembrancer of Legal Affairs.

U.H. to L.S.O. &F.M.D. No. 303-Confl., dated 7th June 1950.

KAN/13-6.
4 c.

Office of the R.L.A.

In the state of evidence as collected by the Police a prosecution as suggested in R.L.A's opinion No.12772, dated the 12th November 1949 is not likely to succeed. The view taken by the secretary Education Department, is correct.

Sd/- P.L.L. 12/6

Remembrancer of Legal Affairs.

U.O. to E.D., No. 7972, dated the 13th June 1950.

KAR/13-6.
4 c.

Office of the R.L.A.

Code of Criminal Procedure, sec. 197.

The Assistant Registrar, whom the Belgori Urban Co-operative Bank Ltd. wants to prosecute for his defamatory letter of 27th August 1949 is presumably a public servant not removable from his office save by or with the sanction of the State Government. The letter which is alleged to contain the defamatory words is written by him while acting or purporting to act in the discharge of his official duties, and therefore under section 197 of the Code of Criminal Procedure the previous sanction of the State Government would be necessary for his prosecution (cf. In Re Gulam Mohammed, I.L.R. 9 Madras 439).

Id/- P.B.L.

Remembrancer of Legal Affairs.

U.R. to D.D. No.5527, dated the 24th April 1950.

KAH/14-6.
4 C.

Office of the R.L.A.

Since the deceased Khadekar first attacked Kulkarni with a dagger without any provocation and thereafter inflicted a stab wound in the chest of Joshi who came to Kulkarni's rescue, both of them were justified in exercising their right of private defence of the body. In the predicament in which they were placed that right would extend even to the voluntary causing of death (section 100 I.P.C.); for there was reasonable cause for apprehension that death would otherwise be the consequence of Khandekar's assault. On the facts as reported by the Police, no offence seems to have been committed by Messrs. Kulkarni and Joshi (section 96 I.P.C.), and the view taken by H.H.(H) is correct.

2. However, since Laxman Kalap gives a different version which if believed may cause some doubt about the right of private defence having been exceeded, and as the case has already been submitted to the Court, it would be inadvisable now to withdraw it. The prosecution should place all facts fairly before the Court and leave it to decide whether the homicide is justified in the exercise of the right of private defence.

Id/- P.H.L. 24/6

Remembrancer of Legal Affairs.

U.R. to H.D., No.3733, dated the 26th June 1950.

KAH/14-6.
4 c.

Office of the S.L.A.

It will be inexpedient for Government to interfere at this stage. Shri Gayakwad may, however, be informed that he was illegally put in possession, and that he should vacate in favour of the applicant who had taken possession through Civil Court. If he declines to vacate, the applicant may commence against him, civil or criminal proceedings accordingly as she is advised.

Id/- P.E.L. 23/6

Secretary of Legal Affairs.

U.R. to H.D., No.8742, dated the 26th June 1950.

KAR/14-6.
4 c.

Office of the R.L.A.

As a proposition of law it may be stated that there is no objection to a further investigation by the Police into a cognizable offence even after the charge-sheet is submitted particularly if the Police discover new evidence or evidence which affects the truth of the case they had presented at the time the charge-sheet was submitted. Whether such further investigation would be expedient must depend upon the facts of each case, and even after such investigation is made the Magistrate will have to make a judicial order about the reception of the fresh evidence provided an objection is raised to its admissibility.

Id/- P.M.L. 28/6

Remembrancer of Legal Affairs.

No.8935, dated the 29th June 1950.

KAN/14-6.
4 C.

Office of the R.L.A.

By para 2 (ii) of the Baroda State (Application of laws) Order, 1949, the Bombay General Clauses Act, 1904 is applied to the interpretation of the order as it applies to the interpretation of a Bombay Act. Para 6(ii)(e) of this Order provides that the repeal by this Order, of any such enactment, notification, scheme, rule, by-law or order shall not affect, amongst other things, any remedy or proceeding in respect thereof.

Under para 6(IV), pending proceedings have been saved because it has been specifically stated that these proceedings shall be continued as before. The provisions of section 7 of the Bombay General Clauses Act, 1904, are to the same effect. In view of all these provisions it appears that the District Magistrate, Baroda will still continue to have jurisdiction to hear the appeals in this case. (Cf. copy of judgment in the case of State Vs. Nagindas Chunilal in C.R.A. No. 350 of 1950 enclosed.). The D.M. may however be invited to decide this matter for himself and pass regular judicial decision.

Id/- P.M.L. 24/6

Remembrancer of Legal Affairs

U.R. to H.D. No. 6703, dated, 27th June 1950.

KAH/14-6.
4 c.

Immediate.

No.7671
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 6th June 1950.

Subject :- Prosecution of Hiralal Manchhoddas Jariwala - application for stay- criminal proceedings.

Memorandum.

In supersession of the orders contained in this office memo No. 7375, dated the 31st May 1950, on the above subject, the Public Prosecutor, Surat is informed as follows

There is no hard and fast rule that a Criminal case should be stayed pending the disposal of a Civil suit in relation to the same subject matter. Each case must be decided by its own facts; (Gopal Chandra 33 C.W.N. 969; Raj Kumari v. Rama Sundari 23 Cal. 610, 620); and the institution of a Civil Suit is not always a valid ground for adjourning a criminal prosecution although issues and evidence in the two cases are practically the same. (Mathura v. Durga 8 Cr. L.J. 798; 30 Mad. 339). Although, generally speaking, it is not desirable that civil and criminal litigation between the same parties on substantially the same facts should go on simultaneously, the mere fact that a civil case is pending is not by itself a sufficient ground for staying criminal proceedings. The defendant in a civil suit ought not to be allowed to prejudice the trial of such suit by launching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witness. If there are reasons to believe that they had been launched with that object the Court should generally stay criminal proceedings. Conversely, if the Court has reason to believe that a civil suit had been launched with the object of prejudicing criminal proceedings, the Court should not be likely to stay the latter, though the Court, should, if necessary,

stay the civil suit. In all such cases one of the matters which the Court has to consider is whether the object of the criminal proceedings is to prejudice the trial of the civil suit or to use them as a lever to coerce the accused into a compromise of the civil suit, and in that connection the question whether the criminal complaint or the civil suit was instituted first is always important. The Courts have frequently drawn a distinction between public and private prosecutions and indicated that stronger reasons for staying proceedings should be required in the case of the former than in the case of the latter. But this is not the only test nor is priority in time necessarily conclusive. There is no hard and fast rule in the matter. The Court has to consider the circumstances of each particular case and decide on grounds of justice and expediency whether it is proper that the criminal proceedings should be stayed, or it may be, that the civil proceedings should be stayed or that both should be allowed to take their course (Dias V. Mahadev 35 Cr. L.J. 311 (312); Newatmal V. Sajanmal 36 Cr. L.J. 94; Faiz Md. V. Abbas 36 Cr. L.J. 1350; Ramchandra Babaji 34 Cr. L.J. 1900) (Mitra's Criminal Procedure Code, Vol. I, 11th Edn. P. 1060). In the present case the defendants in the suit appear to have filed the proceedings after the criminal proceedings were started by Government only with a view to prejudice the criminal proceedings or to delay them by obtaing a stay of the criminal proceedings. On grounds of justice and expediency there is no case for the stay of criminal proceedings. The Public Prosecuto is therefore, requested to oppose the stay on the ground that the suit is based on points of law which can be urged also in the criminal case. There is, therefore, no reason for staying the prosecution.

Sd/- KAN/14-6.
for Remembrancer of Legal Affairs &c.

To
The Public Prosecutor, Surat,
Surat.

Office of the R.L.A.

The question referred to the R.L.A. for opinion is whether it is competent to the officers of the Motor Vehicles Department to draw up a panchnama while checking petrol pumps.

2. In cases where such checking is done as part of a search etc. in the course of an investigation into a cognizable offence, the investigating Police Officer will have the power of making a panchnama under Chapter XIV of the Code of Criminal Procedure and of enforcing the attendance of panchas for that purpose. Where, however, such checking is done under clause 33 of the Motor Spirit Rationing Order for the administrative purpose of enforcing compliance with the provisions of the Order, the checking officers may, if they so desire, make a panchnama with the help of their own panchas; but naturally they will not enjoy the power of compelling the attendance of citizens to serve as panchas.

Id/- P.M.L. 5/7

Remembrancer of Legal Affairs.

U.O. to H.D. No. 9403, dated the 6th July 1950.

Office of the R.L.A.

There is no legal objection to the withdrawal. Whether in view of the special circumstances, the case should be withdrawn and the accused should be proceeded against departmentally is a matter for the Administrative Department to decide.

Id/- P.M.L. 21/7

Remembrancer of Legal Affairs.

U.R. to R.D. No. 555-Confl., dated the 22nd July 1950.

KAR/14-6.
4 c.

Office of the R.L.A.

The prosecution could have charged the accused with an offence falling under one of the non-bailable offences (sections 466, 467, 468 I.P.C., along with the offence under section 471 in the alternative. In that case it would have been competent to the Court to refuse the bail to the accused.

However since such cases are few and since the provisions for recovery of penalty on account of forfeiture of the surety bond are being brought on a par with section 436 of the Code of Criminal Procedure, the amendment proposed by the Sessions Judge, Greater Bombay, does not seem to be necessary.

Id/- P.M.L. 19/3

Remembrancer of Legal Affairs.

U.R. to H.D. No. 11888, dated the 21st August 1950.

Office of the Reject.

The proposal made by the Chief Justice is that Sessions Judges should be enabled to dictate evidence in open Court to Stenographers, and that section 356 of the Code of Criminal Procedure may, if necessary, be amended for that purpose. The present position is that the evidence of each witness has to be taken down in writing in the language of the Court by the Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Sessions Judge. In cases in which the evidence is not taken down in writing by the Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Sessions Judge with his own hand and shall form part of the record. If the Sessions Judge is prevented from making a memorandum as above required, to make he shall record the reason of his inability/ it.

2. It will be observed that section 356(1) permits a Sessions Judge to take down the vidence of a witness in the language of the Court, in which case no seperate memorandum need be made. However, having regard to the fact that the appeals lie to the High Court, whose language is English, and that Sessions Judges are not always able to write in the language of the Court, the practice has grown up of a Deposition writer taking down the evidence in the language of the Court, which is in almost all cases the x language of the witness, and the Sessions Judge making a seperate memorandum in English. Presumably, what the Chief Justice intends is that it should be made possible for Sessions Judges to dictate

that memorandum to a Stenographer. It is presumed that he does not wish to discontinue the system of taking down the evidence in the language of the Court. That presumption is of some importance in its bearing upon the question of saving time.

3. The idea underlying section 355 is to ensure that what the witness says is accurately taken down by an intelligent person. The underlying intention is common to the procedures even in England and in America, particularly in cases where the evidence is to be used by a higher Court. In both these countries, the evidence is recorded under the superintendence of the presiding Judge but is read over to the witness and got signed by him in token of its correctness. Thus in America, the testimony can be taken stenographically and transcribed unless the parties agree otherwise; but when the deposition is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless examination and reading are waived by the witness and by the parties. See United States Code, 1946 Edition, Titles 27-34, p.3397-8. This procedure which applies to civil cases is equally applicable to criminal cases also. See United States Code, 1948 Edition, Titles 16-26, p.1963. In England the position regarding depositions before the Justices is practically the same. See Halsbury's Laws of England, 2nd Hailsham Edn. Vol.9, pp.107-108. In respect of trials on indictments, Judges are expected to make their own notes; and arrangements are also made to take down shorthand notes; but in the case of a discrepancy between the Judge's notes and the shorthand notes, the appeal court will prefer the Judge's notes. It will be thus be seen that shorthand notes are permitted in addition to the Judge's own notes; but nowhere is a Judge permitted to

dictate his own notes to a stenographer or typist. Under our system, the deposition writer takes down a verbatim transcript in the witness' own words, and that corresponds to the short-hand transcript in England and America. Although our practice is not to take the signature of the witness on deposition so recorded, nevertheless the deposition is immediately read out to the witness and the Judge signs it in token of its correctness.

4. The proposal of allowing Sessions Judges to dictate their own notes of evidence to Stenographers is open to the following objections:-

(1) I feel that the accuracy of the evidence as recorded will suffer. It is no doubt true that there is a record of the witness' statement in the regional language as taken down by the Deposition writer; but when the time comes to read out that deposition to the witness, the practice of experienced Sessions Judges has been to compare that record with their own notes while it is being read out and to correct inaccuracies, if any. The paper book which is made for the use of the High Court is based on the Judge's notes. It is only in case of a difference between the two versions that a reference is made to the original record in the regional language. In the matter of accuracy, there is considerable difference between a Judge making a contemporary record in his own writing of what the witness says and the record made by a Stenographer from what the Judge has dictated. That transcript will not be immediately available for purposes of comparison while the deposition in the regional language is being read out to the witness. When the transcript becomes available, it would be difficult for the Judge to scrutinise it with a view to ensure that it is a correct transcript of what he dictated. Besides, it has been the experience of most of the Sessions Judges that the evidence gets fixed in memory better when the Judge writes it in his own handwriting. There is not much substance in the view that Judges are prevented from

watching the demeanour of a witness because they are engaged in writing their notes. Taking notes is an established judicial practice all over the world, and it has never been suggested that it should be stopped in order to enable Judges to watch the witness without any interruption.

(2) There will be no saving of time whatsoever. Such saving would be possible if the alternatives were between a Judge taking down the deposition and dictating the deposition. But as the section stands and upon the presumption made above, so long as some clerk has to take down verbatim the deposition in a regional language, however fast the Stenographer may work, the Judge will necessarily have to wait until the Clerk finishes his record. On the other hand, more time will be wasted in a Judge translating the deposition, dictating it, the Stenographer taking it down, and afterwards the Judge correcting the transcript.

(3) Finally, the proposal will not be feasible unless the number of Stenographers attached to Sessions Courts is increased considerably. At present a Judge is given only one Stenographer; and that too is not invariably a rule in all Courts of Session. That Stenographer has to take down judgments and jury charges in criminal matters and judgments in civil and criminal appeals besides doing other dictation for the Judge in administrative matters. It will be impossible for that Stenographer to sit in Court continuously from 11 a.m. to 5 p.m. taking down depositions; and he will have to work four times as much for making the transcript. With the present strength of Stenographers, it would be impossible to get this work done.

13. On the whole, therefore, I am of opinion that the proposal will not amount to any saving of time but on the other hand will detract from the efficiency of criminal trials.

Id/- P.M.L. 15/7

Remembrancer of Legal Affairs.

N.B. to H.D. No.10066, dated 18th July 1950.

RAR/14-6.
4 c.

Office of the H.L.A.

Local Rules and Orders under un-repealed Central Acts Volume III.

Shri Kaster would be entitled to the payment of expenses for attending the Court provided he obtains an order from the Court. He would be treated as a witness of superior class and would be entitled to claim the expenses admissible to that class under the Rules made by Government under section 544 Criminal Procedure Code. If he wants the payment to be made to his Solicitors on his behalf, he would have to apply and obtain the Court's order accordingly.

Id/- P.N. L. 29/8

Remembrancer of Legal Affairs.

U.O. to F.D., No.659-Confl., dated the 31st August 1950.

KAH/14-6.
4 c.

the utilization of the services of the Probation Officer for purposes of proceedings under Chapter XXXVI Criminal Procedure Code as proposed by the Madras High Court would not appear necessary in the Bombay State. A.L.A. has no special remarks to offer beyond expressing his agreement with the view taken by the Chief Presidency Magistrate and accepted by the High Court.

Id/-P.H.L. 7/8

Remembrancer of Legal Affairs.

U.O. to H.D. No. 11225 dated the 8th August 1950.

KAH/14-8.
4 c.

Office of the R.L.A.

The Public Works Department is requested to issue orders granting legal assistance to Shri Naydeo, the Superintending Engineer, Poona, under rule 169 of the Law Officers Rules. It is for the consideration of the Public Works Department whether Shri Paregaonker should not be suspended and disciplinary action taken against him for filing a prosecution against his superior, as stated by the Remembrancer of Legal Affairs in his opinion No.313-Confl., dated the 3rd June 1949.

Id/- P.M.L. 4/7

Remembrancer of Legal Affairs.

U.H. to P.W.D., No.497-Confl., dated the 4th July 1950.

KAN/14-6.
4 c.

Office of the R.L.A.

Criminal Procedure Code - sections 88 and 89 - Remedies of Auction purchaser.

The view "A" on page 37 ante, is correct for the charge under section 422 I.P.C. being non-compoundable and the power to withdraw from prosecution having vested in the Public Prosecutor under section 494 Criminal Procedure Code the application given by the applicant's father requesting to withdraw the case against accused Nos. 1 and 3 was ineffective and could not affect the proceedings under sections 88 and 89 Criminal Procedure Code.

The view "B" on page 37 ante, that the auction purchaser has no remedy is correct. Section 89 Criminal Procedure Code has no application. A person other than the proclaimed person can make a claim under section 88(6A) within six months from the date of attachment. The applicant appears to have purchased the property on 6-2-1941. This means that she had no interest in the property on the date of attachment i.e. on 24-12-1933. Since he is an auction purchaser subsequent to the date of attachment, he can claim no right to the property.

Id/- P.E.L. 19/9

Remembrancer of Legal Affairs.

U.R. to R.D. No.13361, dated the 20th September 1960.

4 c.

Office of the H.L.A.

I do not feel happy about the proposal of changing the jury system in the District of Belgaum so as to confine trials by jury to the minor offences punishable with imprisonment for less than 10 years and fine. I have the longest experience of jury trials in Belgaum where I served as a Sessions Judge for full four years, and tried with the help of jury a number of cases including political cases arising out of the 1942 movement. My own experience shows that if care is taken in preparing the jury list, and if the Judge gives them good guidance, the jury are by no means perverse - at least not more than in other Districts. The difficulty with the jury system is that the Sessions Judges scarcely take interest in preparing the jury list which work is generally left to the Huzur Deputy Collector. Belgaum is a big place with a number of Schools and Colleges, and I really wonder why it should be difficult to find men with good educational qualifications. To say that all of them lack integrity and character is in my opinion going too far. Judges no doubt find the juries irk some; for, a jury trial tends to take longer time, since 8 or 9 jurors have to become familiar with the evidence along with the Judge, and not all Judges like the task of guiding the jury. However, the jury system is intended to train citizens in a sense of responsibility and to inspire confidence in the accused that he is tried by his equals. The question of revising the jury system in Belgaum has been discussed off and on for a number of years. I had prepared a note on this subject while in Belgaum, which, if my recollection serves me right, I had

forwarded to the High Court, and therein I had taken the view that the jury system is it obtained in Belgaum should be continued. That system was no doubt anomalous - in that certain specified important offences were excluded from the purview of the jury, especially murder and forgery, which form the bulk of crimes in Belgaum. I do not think that the character of the citizens of Belgaum could have deteriorated so much in the last four years as to necessitate the withdrawal from the jury of all other major offences punishable with imprisonment beyond 10 years. I may add from the point of view of the Legal Department that the cases which were examined for appeals against acquittals did not show that the verdicts of the Belgaum juries were perverse, and I do not know whether there are sufficient number of references made by Sessions Judges from Belgaum against the verdicts of juries to justify the censure that the juries do not take reasonable views. In my opinion unless there be strong reasons we should not go back on the system which has now been working for a number of years.

2. If, however, it is decided to curtail the scope of the jury system as proposed, the revised draft notification will serve the purpose.

Id/- P.M.L. 20/9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1379. dated 20-9-1950.

KAN/14-6.
4 c.

Office of the H.L.A.

Since the offences were non-cognizable (though some of them were non-compoundable) the Magistrate could use his discretion and discharge the accused under section 259 of the Code of Criminal Procedure when the complainant was absent.

Id/- P.L.L. 7/4

Remembrancer of Legal Affairs.

U.O. to H.D. No.15599, dated the 7th November 1960.

KAH/14-6.
4 c.

Office of the R.L.A.

It appears from the District Magistrate's letter that Shri Chavan had made a reference to the High Court on the question of the exercise of summary powers by him on his transfer from Baroda to the Satara North District. High Court has called for District Magistrate's remarks before taking any decision in the matter. It is therefore desirable to await High Court's decision on the reference made by Shri B Chavan.

Id/- P.H.L. 7/11

Remembrancer of Legal Affairs.

U.R. to H.D. No.15652, dated the 6th November 1950.

KAH/14-6.
A C.

Office of the R.L.A.

Investing Supernumerary Assistant Collector As III Class Magistrate.

Criminal Procedure Code, 1879.

By Home Department notification No.1456/6 dated 21.4.1950 all persons holding the offices of Assistant Collectors are invested with the powers of the third Class Magistrate in the District to which they may be posted. Deputy Secretary, Home Department is of the view that as Shri Shivraj was appointed as Supernumerary Assistant Collector he will have to be invested with the III Class magisterial powers and the Notification referred to above will not cover his case. The question raised is whether Shri Shivraj who has been appointed as Supernumerary Assistant Collector should be invested with the powers of the III Class Magistrate.

2. A Supernumerary Assistant Collector is appointed under section 9 of the Bombay Land Revenue Code, 1879. His post is in excess of the normal number sanctioned for the district. Whenever Government wants him to do the work of Assistant Collector as is appointed by a Notification to that post permanently or temporarily. It is therefore clear that he cannot exercise the powers of a third Class Magistrate which are conferred upon all Assistant Collector by Home Department Notification No.1456 dated 21.1.1950.

carry on the duties of an Asstt. Collector unless he is so appointed. Consequently he cannot in

Id/- P.M.L. 11/10

Remembrancer of Legal Affairs.

U.R. to H.D. No.14317, dated the 12th October 1950.

KSH/14-6.
4 c.

Office of the R.L.A.

The Anti-Corruption Tribunal of the Baroda State has held that acceptance of the money by the Police Patil from the applicant was as part payment of a loan of Rs. 600/- which the complainant's father had taken from the Police Patil. The Tribunal therefore directed that the amount attached should be returned to the Police Patel. Although the applicant paid the amount to Police Patel at the instance of the Police, the latter are not bound to refund this amount because the Tribunal has accounted the same as part payment of the loan due to the Police Patel. The applicant may seek his remedy against the Police Patel in a Civil Court. The applicant cannot be asked to file an appeal in this case as it is for the Government to file an appeal against the order of acquittal, and since the case was decided on 30th April 1949, the appeal, if filed, would be time-barred.

Id/- P.H.L. 23/1

Remembrancer of Legal Affairs.

U.R. to H.D., No.16606, dated the 25th November 1950.

KAH/14-6.
4 C.

Office of the R.L.A.

Contempt of Court

Criminal Procedure Code, 1898

Section 480(1) & 4(m) and Bombay District Police Act, 1890 Section 38-A

Under section 480(1) of the Code of Criminal Procedure, power is given to the Civil, Criminal or Revenue Court to take cognisance of the contempt for such offence as is described in section 175,178,179,180 or 228 of the Indian Penal Code. It is, therefore, clear that a Civil, Criminal or Revenue Court can punish an offender for behaving insolently against it. "A Court is a place where justice is judicially ministered" (see Coke on Littleton, 58, quoted with approval in Sashi Bhushan v. Fulkhan 44 Calcutta Weekly Notes 763). A Court presupposes a judicial proceeding conducted according to definite rules of procedure (see Bibhuti v. Dwarikanath, A.I.R. 1913 Cal.674). "Judicial Proceeding" as defined in section 4(m) of the Criminal Procedure Code includes any proceeding in the course of which evidence is or may b legally taken on oath. In the present case the Prant Officer had gone to Gajendragad to inquire into the complaints made by the residents about the conversion of a building into a cinema theatre. Probably such inquiry would fall under the rules framed under sectio 38A of the Bombay District Police Act, 1890. Neither the District Magistrate nor the Prant Officer has stated under what provisions of law the inquiry was held. It is at any rate quite clear that the Prant Officer was holding the inquiry not as a Courtbut in his administrative capacity. Consequently no offence of contempt of court could be considered to have been committed by Shri Kosgi even if he had acted insolently towards the Prant Officer.

Id/- P.M.L. 12/8
Remembrancer of Legal Affairs.

KAK/14-6-
4 c.

U.O. to H.D. No. 11564, dated the 14th August 1945.